

STATE OF CALIFORNIA
AND THE
UNITED STATES DEPARTMENT OF THE NAVY

IN THE MATTER OF:)	
)	
The U.S. Department of the Navy)	
)	
)	Federal Facility Site Remediation Agreement
)	
Naval Computer and)	
Telecommunications Station,)	
San Diego Detachment)	
Stockton, California)	
)	
_____)	

The Parties to this Federal Facility Site Remediation Agreement ("Agreement") are the U.S. Department of the Navy ("Navy"), the Department of Toxic Substances Control ("DTSC") and the Regional Water Quality Control Board, Central Valley Region ("RWQCB") (collectively, the "State"). The Navy and the State are collectively referred to as the Parties. DTSC is acting as lead regulatory agency and the RWQCB as support agency, except with respect to the petroleum underground storage tanks ("USTs") and petroleum contaminated sites for which RWQCB is the lead regulatory agency and DTSC is the support agency. The responsibilities of the lead and support regulatory agencies are set forth in this Agreement and the Memorandum of Understanding between DTSC, the State Water Resources Control Board and the Regional Water Quality Control Boards for Cleanup of Hazardous Waste Sites, dated August 1, 1990. Based on the information available to the Parties on the effective date of this Agreement, and without trial or adjudication of any issues of fact or law, the Parties agree as follows:

1. JURISDICTION

1.1. Each Party enters into this Agreement pursuant to the following authorities:

a. DTSC enters into this Agreement pursuant to the Resource Conservation and Recovery Act ("RCRA") Sections 3006 and 6001 (42 U.S.C. Sections 6926 and 6961), and chapters 6.5 and 6.8 of division 20 of the California Health and Safety Code.

b. The RWQCB enters into this Agreement pursuant to and in furtherance of Division 7 of the California Water Code, the Clean Water Act (33 U.S.C. 1251 *et seq.*; "CWA"), RCRA Subchapter IX, Division 20, Chapters 6.67, 6.7 and 6.75 of the California Health and Safety Code, and the regulations, plans and policies adopted under each of the above-identified statutes.

c. The Navy enters into this Agreement pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA") Sections 120(a)(4), 120(f) and 121 (42 U.S.C. Section 9620(a)(4), 9620(f) and 9621), the Defense Environmental Restoration Program ("DERP"), 10 U.S.C. Sections 2701 *et seq.* and Executive Order 12580.

2. FINDINGS OF FACT

2.1. The Navy operated Rough and Ready Island as an active military installation when a Naval Supply Depot was commissioned there in the 1940s. In 1965, the supply depot was deactivated, and control of the Naval facility was assigned to the Naval Communications Station (NCS), which had been on site since about 1960. In 1998, NCS Stockton was reassigned and became Naval Computer and Telecommunications Station San Diego Detachment Stockton ("NCTS"). In July 2000, Naval operations ended.

2.2. The Navy is the owner and operator of several former hazardous waste management facilities, solid waste management units ("SWMUs"), Sites, petroleum underground storage tanks ("UST"), and oil water separators ("OWS") contaminated sites located at NCTS.

- 2.3. On April 6, 1981, the Facility was issued an Interim Status Document (“ISD”) by the California Department of Health Services in response to the “Part A” RCRA permit application to allow continued operation of five containers, two tanks and one oxidation unit until a full permit could be issued. Part B Applications were received in 1988 and 1989. DTSC issued a Hazardous Waste Facility Permit on April 20, 1992 for the Hazardous Waste storage Facility located at Building 804A. A Permit Modification was issued to extend the permit until December 31, 1997. A clean closure certification was issued for Building 804A on December 31, 1997. A map of these sites is included in Attachment A. A list and description of these sites is included in Attachment B.
- 2.4. Hazardous waste, hazardous waste constituents, and/or other wastes, including sediment, have been released into the environment from the Facility, and have migrated or may migrate from the Facility into the environment through soil, ground water, interior surface water or surrounding surface water.
- 2.5. In 1975, the Navy developed the Navy Assessment and Control of Installation Pollutants (“NACIP”) program to identify and control contamination resulting from past storage, handling, and disposal of hazardous materials. In early 1988, the Navy converted the NACIP Program to the Installation Restoration Program. The first phase of investigation under the two programs was an Initial Assessment Study of select sites carried out in 1984, followed by a Confirmation Study in 1988, and a Site Investigation in 1989. Under the two programs, 43 sites were recommended for further investigation for chemical contamination.
- 2.6. The Navy conducted an investigation of the subsurface extent of soil contamination at 22 sites referred to as IR sites. The results of this investigation, although ongoing and not complete, are summarized in the draft Remedial Investigation Report, Operable Unit 1, dated December 2001. This report presented data that indicated releases to the environment of various organic and inorganic contaminants had occurred at all 22 sites.
- 2.7. The Navy conducted an investigation of the subsurface extent of soil and groundwater contamination at the landfills at 10 sites referred to as IR sites. The results of this investigation, although ongoing and not complete, are summarized in the draft final Remedial Investigation Report, Operable Unit 3, dated December 2001. This report presented data that is not conclusive.
- 2.8. The Navy conducted an investigation of the subsurface extent of groundwater contamination at 9 sites referred to as IR sites. The results of this investigation, although ongoing and not complete, are summarized in the draft Remedial Investigation Report, Operable Unit 4, dated January 2002. This report presented data that indicated releases to the environment of various organic and inorganic contaminants had occurred.
- 2.9. The Navy UST/OWS investigations indicate that there are 6 sites where petroleum and hazardous waste may have been released to the environment. These sites are known as the Navy UST/OWS program sites. A map of these sites is included in Attachment A. A list of these sites is included in Attachment B.

- 2.10. The hazardous substances, hazardous waste and hazardous waste constituents of concern at the Facility include volatile organic compounds (“VOCs”), semi-VOCs, heavy metals, petroleum hydrocarbons, pesticides, and possible radiological materials.
- 2.11. The Facility is located near the following geological features, residences, aquifers, surface water bodies, wells, and fragile environments:
- a. The geology at NCTS Stockton consists of unconsolidated, organic-rich clay and silt with less abundant peat, sand and gravel. The deposits are Recent of Pliocene in age and are encountered directly beneath NCTS Stockton to a depth of approximately 1,500 feet. Sedimentary deposits at the installation are related to meandering river deposits in a back delta environment. Four sedimentary facies have been identified at the installation: back swamp, flood plain, channel, and abandoned channel. Peat and organic clay found at shallow depths represent a back swamp environment. Flood plain deposits consisting of clays and silts and sheet flow sands were encountered in most areas investigated at the installation.
 - b. The water table at NCTS Stockton is shallow with depths that vary from 1 to 4 feet below ground surface (bgs) in the low lying areas to approximately 12 to 16 feet bgs in the higher elevations of the Island. A drainage channel system has been installed to prevent the island from flooding. The drainage system intercepts rainfall and groundwater discharge and directs the collected water to the pump house at the southwestern corner of the island where it is pumped off the island into Burns Cutoff. The Facility is located within the San Joaquin Valley Groundwater Basin with existing and potential beneficial uses as identified in the Water Quality Control Plan for the Central Valley Region;
 - c. The Facility is bounded by Stockton Deep Water Channel to the north, the San Joaquin River to the east, and Burns Cutoff to the south and west. The island is protected from higher surrounding water by levees. Consistent with topography, drainage on the island flows generally from east to west and has been organized into a rectilinear system of interior drainage channels.

3. DETERMINATIONS

- 3.1. The following constitutes a summary of the determinations relied upon by the Parties to establish their authority to enter into this Agreement. None of these determinations shall be considered admissions by any person, related or unrelated to this Agreement, for purposes other than determining the basis of this Agreement or establishing the authority of the Parties to enter into this Agreement:
- a. The Navy is a “person” as defined in RCRA Section 1004(15) (42 U.S.C. Section 6903(15)), CERCLA Section 101(21), (42 U.S.C. Section 9601(21)) and is a “person” subject to California Health and Safety Code, Sections 25118, 25187, 25270.2, and 25281 and Division 7 of the California Water Code.

b. The former NCTS is a “Facility” as defined by CERCLA Section 101(9) (42 U.S.C. Section 9601(9)), 10 U.S.C. Section 2701 *et seq.*, California Health and Safety Code Sections 25200.10 and 25281, and Section 66260.10 of Title 22, California Code of Regulations. Maps of the Facility are included in Attachment A. For the purposes of this Agreement, the definition of Facility also includes any portion of the facility for which title has been or will be transferred.

c. The Navy is the owner of the Facility as defined in CERCLA Sections 101(20) and 107(a)(1) (42 U.S.C. Sections 9601(20) and 9607(a)(1)), and the owner or operator of a facility that has operated or is operating subject to RCRA Section 3005(c) (42 U.S.C. Section 6925(c)) and California Health and Safety Code Sections 25200.10 and 25201. The Navy is the owner and operator of USTs, as defined in Division 20, Chapters 6.7 and 6.75 of the California Health and Safety Code. Some of these USTs are or may be subject to regulation pursuant to Division 20, Chapters 6.5 and 6.8 of the California Health and Safety Codes. The Navy is the owner and operator of above-ground storage tanks (“ASTs”), as defined by Division 20, Chapter 6.67 of the California Health and Safety Code. The Navy is the Department of Defense component charged with fulfilling the obligations of the owner under RCRA at the Facility.

d. There are or have been releases or substantial threats of releases of hazardous substances, pollutants, contaminants, hazardous wastes, wastes or constituents at or from the Facility.

e. The actions provided for in this Agreement protect the public health, or welfare or the environment.

4. PURPOSE

4.1. The purposes of this Agreement are to:

a. Coordinate the Navy’s satisfaction of its corrective action and response action obligations under RCRA, California Water Code Division 7, and California Health and Safety Code Section 25200.10 and Division 20, Chapters 6.5, 6.67, 6.7, 6.75 and 6.8 with its responsibilities under CERCLA, the NCP (40 CFR Part 300), and Executive Order 12580, the Defense Environmental Restoration Program.

b. Satisfy the Navy Obligations as described in Section 5.4.

c. Ensure that the environmental impacts associated with the past Navy activities at the Facility are thoroughly investigated and the appropriate corrective, removal and/or remedial actions are taken as necessary to protect the public health, welfare, and the environment.

d. Establish a framework and schedule for developing, implementing and monitoring appropriate response actions at the Facility in accordance with applicable state law and other applicable promulgated requirements, and consistent, to the maximum extent possible, with the priorities, guidelines, criteria and regulations contained in the National Contingency Plan (“NCP”).

e. Facilitate cooperation, exchange of information, and participation of the Parties in such action.

f. Assure compliance with applicable state and federal hazardous waste and water quality laws and regulations for matters covered herein.

g. Provide for operation and maintenance of any remedial action selected and implemented pursuant to this Agreement.

h. Establish a framework for assuring that environmental response work undertaken by other parties pursuant to written agreements is completed to the satisfaction of the State, and establish a framework for assuring that response to conditions that fall outside of the scope and duration of obligations of other parties is completed to the satisfaction of the State.

5. SCOPE OF AGREEMENT

5.1. This Agreement is to enable the Navy to implement RCRA, CERCLA, and Division 7 of the California Water Code and Division 20, Chapters 6.5, 6.67, 6.7, 6.75, and 6.8 of the California Health and Safety Code corrective and response action obligations that relate to the releases of hazardous substances, hazardous wastes, hazardous constituents, pollutants, waste or contaminants at or from the Facility. This Agreement is not intended to limit any requirements under RCRA or any other law or regulation to obtain permits consistent with CERCLA Section 121(e)(1)'s limitations on obtaining permits for onsite removal or remedial actions as discussed further in Section 26.1, below.

5.2. The scope of this Agreement extends to the entire Facility and, where necessary, shall extend beyond Facility boundaries, as set forth in California Health and Safety Code Section 25200.10, and Division 7 of the California Water Code, as necessary to effectuate the purposes of this Agreement.

5.3. Any corrective and response action in progress on the Effective Date of this Agreement shall be subject to the obligations and procedures of this Agreement.

5.4. For purposes of this Agreement, the obligations of the Navy ("Navy Obligations") are defined to include overall responsibility for remediation of all releases of hazardous substances, hazardous materials, hazardous wastes, hazardous waste constituents, and other wastes. Except as noted in Section 5.5 below, these obligations remain in full force and effect, including any portion of NCTS for which title has been or will be transferred.

5.5. The Navy is entering into an agreement for the investigation and remediation responsibility of certain portions of NCTS with third parties through one or more Environmental Services Cooperative Agreements ("ESCAs"), which include scopes of work required of the third party, in anticipation of an early transfer of portions of the Facility, as described in Section 24.4 of this Agreement. The State will suspend the Navy's obligations pursuant to this Agreement upon execution of and compliance with a Consent Agreement between the State and the third party. In that case, the Navy's obligations are:

a. Navy-Retained Conditions as defined in the ESCAs, included in Attachment D. The Navy will promptly notify and consult with the State regarding any proposed changes to the Navy-Retained Conditions prior to execution of an amendment to the ESCA. If the State determines that changes in the Navy-Retained Conditions will leave roles and responsibilities of the cleanup uncertain, the State may dispute the changed conditions; and

b. any releases resulting from actions or omissions of the Navy that are ultimately not remediated pursuant to the Consent Agreements.

In the event the Port is out of compliance with the terms of the Consent Agreement, and the State is unable, through reasonable enforcement efforts, to obtain Port compliance, the Navy acknowledges its responsibilities to satisfy its requirements under CERCLA, the NCP and other applicable laws and regulations.

the Navy's obligations

5.6. Releases, discharges, or other hazardous waste activities not covered by this Agreement remain subject to all applicable state and federal environmental requirements.

6. RCRA-CERCLA COORDINATION

6.1. The Navy may discharge some or all of RCRA corrective action obligations that relate to the releases or threatened releases of hazardous waste or constituents through CERCLA response actions that meet all the requirements of this Agreement. To the extent that the State certifies a site that is remediated pursuant to this Agreement, the Navy will be deemed to have undertaken and completed all necessary corrective action for that site.

6.2. The State will coordinate its oversight of the Navy's RCRA corrective action obligations and will coordinate state and local Applicable or Relevant and Appropriate Requirements ("ARARs") identification with all other participating agencies.

7. DEFINITIONS

7.1. Except as otherwise explicitly stated, the definitions provided in Chapters 6.5, 6.67, 6.7, 6.75, and 6.8 of Division 20 of the California Health and Safety Code, California Water Code Division 7, and Division 4.5 of Title 22 of the California Code of Regulations shall control the meaning of terms used in this Agreement.

7.2 "Days" means calendar days except as otherwise specified.

8. WORK TO BE PERFORMED

8.1. General

a. For each site listed on Attachment B, the Navy shall perform the work required. All work undertaken pursuant to this Agreement shall be performed to the satisfaction of the State and, at a minimum, shall be consistent with California Health and Safety Code; California Water Code; and other applicable state and federal laws and their implementing regulations; and applicable DTSC, RWQCB, or U.S. EPA plans, policies, and guidance documents including, but not limited to the "RCRA Facility Investigation (RFI) Guidance" (Interim Final, May 1989, EPA 530/SW-89-031), "RCRA Groundwater Monitoring Technical Enforcement Guidance Document" (OSWER Directive 9950.1, September 1986), "Test Methods For Evaluating Solid Waste" (SW-846), and "Construction Quality Assurance for Hazardous Waste Land Disposal Facilities" (EPA 530/SW-85-031, July 1986), DTSC Public Participation Manual EO-94-002-PP (February 1997), U.S. EPA RCRA Public Participation Manual EPA 530-R-96-007 (September 1996), the Water Quality Control Plan for the Central Valley Basin, and the State Water Resources Control Board Resolution Nos. 92-49, 88-63, and 68-16. All petroleum cleanup conducted at or near the Facility shall be conducted in a manner consistent with Sections 6001, 7003, and 9007 of RCRA; 40 CFR Part 280; California Health and Safety Code, Division 20, Chapters 6.5, 6.67, 6.7, 6.75, and 6.8; California Water Code Division 7; California Code of Regulations Title 23, Division 23, Chapter 16, Title 23, Division 3, Chapter 15, and Title 27, Division 2; and applicable RWQCB plans and policies. If there are differing standards, requirements or protocols, the more stringent standards will apply. The State shall determine which standards, requirements or protocols are more stringent.

b. To the extent that work has already been completed to the State's satisfaction on any of the sites listed in Attachment B, the State may waive some or all of the requirements set forth herein. Except as otherwise indicated in Attachment B, such determinations shall be made by the State in writing upon the Navy's application setting forth a detailed description of the work that has been done and listing documents or other deliverables previously submitted to the State that the Navy maintains will satisfy the requirements of this Agreement.

c. To the extent that there is any conflict between the terms of this Agreement and the terms of any attachment to this Agreement or any State-approved Workplan or equivalent document(s), the terms of this Agreement shall control.

d. Any request for revision of an approved workplan requirement must be in writing. Such request must be timely and provide justification for any proposed workplan revision. The State has no obligation to approve such requests, but if it does so, such approval will be in writing and signed by the State. Any approved workplan modification shall be incorporated by reference into this Agreement. In the event that minor changes are required during implementation of an approved workplan and conditions do not allow for a written variance request, the Navy will make a best effort to notify the State verbally with written correspondence to follow.

8.2. If the Navy chooses to discharge any of its corrective action obligations through CERCLA response actions, it may submit CERCLA documents equivalent to those required by this section to the State for its review and approval.

8.3. A workplan, task list, and schedule, as discussed in Sections 12 and 13 below, for all Navy work to be performed pursuant to this Agreement will be attached to this Agreement as Attachment C at the appropriate time. Attachment C will be modified as appropriate to reflect changes in Navy

activities required pursuant to this Agreement as a result of assumption of responsibilities pursuant to subsequent ECSA(s) and Consent Agreement(s) subject to early transfer.

8.4. Attachment D includes the ESCA(s), Consent Agreement(s), and a narrative description of the obligations being assumed by the third parties.

9. PROJECT MANAGERS

9.1. Within 14 days of the effective date of this Agreement, the State and the Navy shall each designate a project manager and shall notify each other in writing of the project manager selected. Each project manager shall be responsible for overseeing the implementation of this Agreement and for designating a person to act in his/her absence. A contractor may not serve as a project manager.

9.2. All communications between the Navy and the State, and all documents, report approvals, and other correspondence concerning the activities performed pursuant to this Agreement shall be directed through the project managers. Each Party may change its project manager with at least seven (7) days prior written notice.

9.3. The Parties' project managers shall meet or confer informally as necessary. At least one week prior to each project manager meeting, the Navy will provide a draft agenda and applicable supporting documentation, if any, to the State. At least one week prior to each project manager meeting, the Navy will provide a draft agenda and summary of the status of the work subject to this Agreement to the State. These status reports shall include, when applicable:

- a. identification of all data received and not previously provided by the Navy during the reporting period;
- b. all activities completed pursuant to this Agreement since the last project manager meeting, as well as such actions and plans which are scheduled for the upcoming 90 days; and
- c. a description of any delays, the reasons for such delays, anticipated delays, concerns over possible timetable implementation or problems that arise in the execution of a workplan during the quarter and any steps that were or will be taken to alleviate the delays or problems.

9.4. The Navy's project manager shall be responsible for preparation of minutes of all meetings. The State will have five (5) business days to submit comments to the Navy. The minutes of each project managers meeting shall be prepared by the Navy and, with the meeting agenda, will be sent to the State's project managers within 14 days after the meeting. The State shall provide comments on the minutes, if any, and the Navy will revise the minutes to incorporate such comments. Any documents requested during the meeting will be provided in a timely manner.

9.5. The authority of the project managers includes, but is not limited to:

- a. taking samples and ensuring that sampling and other field work is performed in accordance with the terms of any final workplan and with applicable state and U.S. EPA guidance;

b. observing, and taking photographs (in accordance with DoD guidance if within an operating DoD facility) and making such other reports on the progress of the work as the project managers deem appropriate, subject to the limitations set forth in Section 28 (Access);

c. reviewing records, files and documents relevant to the work performed, subject to the limitations set forth in Section 36 (Release of Records).

d. determining the form and specific content of the project manager meetings and of progress reports based on such meetings; and

e. recommending and requesting minor field modifications to the work to be performed pursuant to a final workplan, or in techniques, procedures, or design utilized in carrying out such workplan.

9.6. The Navy's project manager shall be responsible for day-to-day field activities at the Facility. The Navy's project manager or other designated Facility representative shall be present at the Facility or reasonably available to supervise work during all hours of work performed at the Facility pursuant to this Agreement. For all times that such work is being performed, the Navy's project manager shall inform the State of the name and telephone number of the designated representative responsible for supervising the work.

9.7. If any event occurs or has occurred that may delay or prevent the performance of any obligation under this Agreement, whether or not caused by a force majeure event, the Navy or the State shall notify the other Parties' project managers by telephone within two (2) working days of when the Navy or the State first became aware that the event might cause a delay. If the Navy or the State intends to seek an extension of a deadline or schedule because of the event, it shall do so in accordance with Section 19 (Extensions).

10. DOCUMENT REVIEW AND APPROVAL

10.1. This section establishes the procedures that the Parties will use to provide technical support, notice, review, comment, approval, and response to comments regarding remedial and removal action documents the Navy submits to the State. The Navy will normally be responsible for preparing and distributing documents to the State. As of the effective date of this Agreement, all draft, draft final, and final deliverable documents identified herein shall be prepared, distributed and, with respect to draft final documents, subject to dispute resolution in accordance with this Agreement. If the Navy intends to submit any documents required under this section prior to the deadline, the Navy shall notify the State 15 days in advance of the early submission. All notices and documents required to be submitted to the State under this Agreement shall be given and submitted, respectively, to both DTSC and the RWQCB.

10.2. The State may determine that the Navy may merge, delete, or combine multiple documents if deemed appropriate and, if so, may adjust deadlines accordingly. The State may also determine that

a document already completed for one Site, IAS, UST OR OWS is sufficient to cover the same topic for another Site, IAS, UST OR OWS.

10.3. The Navy shall complete and transmit drafts of the following documents (or the RCRA equivalents) for each Site, IAS, UST OR OWS and for the final remedy to the State for its review, comment, and approval in accordance with this section:

- a. Remedial Investigation Work Plans
- b. Remedial Investigation Reports (including Baseline Risk Assessments for human health and the environment)
- c. Feasibility Study and Focused Feasibility Study Reports
- d. Proposed Plans
- e. Records of Decision
- f. Final Remedial Designs (including monitoring and reporting requirements)
- g. Remedial Action Work Plans
- h. Remedial Action Completion Reports
- i. Site Management Plan

10.4. The Navy shall complete and transmit draft documents in accordance with the schedule attached as Attachment C and the schedule established in Section 12 (Deadlines and Contents of Site Management Plan) of this Agreement.

10.5. The Navy shall revise any workplan, report, specification, or schedule to address the State's written comments. Revised submittals are subject to the State's approval or disapproval.

10.6. Review and Comment on Draft Documents

a. The Navy shall complete and transmit each draft document to the State on or before the corresponding deadline established for the issuance of the document.

b. Except as provided in Section 11.3(d) for time critical removal action documents, all draft documents shall be subject to a 60-day period for review, comment, and approval by the State. At or before the close of the 60-day review period, the State shall transmit its written comments to the Navy. The Parties may determine that specific documents require less than 60 days for review. In that case, the Parties may alter the review schedule accordingly.

c. The Navy shall be available to the State during the review period for purposes of responding informally to questions and comments on draft documents. Oral comments made during such discussions need not be the subject of a written response by the Navy at the close of the comment period.

d. Following the close of the review period for a draft document, the Navy shall give full consideration to all written comments. If any Party requests, within 15 days following the close of the comment period on a draft document, the Parties shall hold a meeting to discuss all comments received.

e. With respect to a draft document, the Navy shall, within 60 days of the close of the review period, transmit a draft final document, which shall include the Navy's response to all written comments received within the review period, to the State.

f. The Parties may agree to time periods other than as set forth in this section. In appropriate circumstances, this time period may be further extended in accordance with Section 19 (Extensions).

10.7. Document Approval

a. The State has approval authority over all draft final documents. The State shall approve or disapprove a draft final document within 30 days after it receives the draft final document.

b. Upon receipt of the State's written approval, the Navy shall commence work and implement any approved workplan in accordance with the schedule and provisions contained therein.

c. If the State submits additional comments or disapproves of any draft final document, the Parties shall meet within 15 days to address the comments or disapproval. The Parties shall work in good faith to expedite resolution and minimize delays to the SMP schedule.

d. Any State-approved workplan, report, specification, or schedule required under this Agreement shall be deemed incorporated into this Agreement.

e. Verbal advice, suggestions, or comments given by State representatives will not constitute an official approval or decision.

f. If the State does not comment on a draft final document within 30 days, the Parties shall in good faith coordinate to resolve the delay.

g. If the State does not approve a draft final document, the Navy may invoke dispute resolution pursuant to Section 21 (Dispute Resolution).

h. When the Navy invokes dispute resolution on a draft final document, work may be stopped in accordance with the procedures set forth in Section 11.2 (Work Stoppage).

10.8. Finalization of Documents

The draft final document shall serve as the final document if the State approves the draft final document. If the Navy invokes dispute resolution, the final document will be as determined through the dispute resolution process.

10.9. Subsequent Modification of Final Documents

a. Following finalization of any document pursuant to Section 10.7 above, the Navy may seek to modify the document or the State may require modification of the document, including seeking additional field work, pilot studies, computer modeling or other supporting technical work.

b. Any Party may seek to modify a document after finalization by submitting a concise written request to the other Parties' project manager. The request shall specify the nature of the requested modification and shall demonstrate that:

(1) the requested modification is based on information that became available or conditions that became known, after the document was finalized; or

(2) the requested modification could be of significant assistance in evaluating impacts on the public health or the environment, in providing an equally protective but less expensive technology, in evaluating the selection of response alternatives, or in protecting human health and the environment.

c. The State may determine or the Navy may propose that certain tasks, including investigatory work, engineering evaluation, or procedure/methodology modifications are necessary in addition to, or in lieu of, the tasks and deliverables included in any part of State-approved workplans. The State shall request in writing that the Navy perform the additional work and shall specify the basis and reasons for the State's determination that the additional work is necessary. Within 14 days after the receipt of such determination, the Navy may confer with the State to discuss the additional work requested. If required by the State, the Navy shall submit a workplan to the State for the additional work. Such workplan shall be submitted to the State within 90 days of receipt of the State's determination or according to an alternate schedule established by the Parties. Such workplan shall be submitted to the State according to an alternate schedule established by the parties. Upon approval of a workplan, the Navy shall implement it in accordance with the provisions and schedule contained therein. The Navy may dispute the State's decisions regarding additional work in accordance with Section 21 (Dispute Resolution) of this Agreement.

d. Nothing in this section shall alter the Parties' respective abilities to request the performance of additional work, which was not contemplated or covered by this Agreement. The Navy's obligation to perform such work must be established by either a modification of a document or by amendment to this Agreement.

11. EMERGENCIES AND REMOVAL ACTIONS

11.1. Discovery and Notification

a. For purposes of this Agreement, “emergency removal action” is defined as a situation that poses a risk of fire or explosion or that needs immediate attention, *i.e.*, within hours or days of discovering the situation.

b. If any Party discovers or becomes aware of an emergency or other situation that may present an endangerment to public health, welfare or the environment at or near the Facility, which is pertinent to or may affect the work performed under this Agreement, that Party shall notify the other Party orally within 24 hours and will forward written notification within seven (7) days.

c. For emergency removal actions, the Parties will consult to the extent practical before commencement of fieldwork and the Navy shall notify the State in accordance with subsection 11.1.b. Such oral notification shall, except in such a case where the urgency of the situation does not allow, include adequate information concerning the site background, threat to the public health and welfare or the environment (including the need for response), proposed actions and costs (including a comparison of possible alternatives, means of transportation of any hazardous substances off the premises at NCTS, and the proposed manner of disposal), and expected change in the situation should no action be taken or should action be delayed (including associated environmental impacts). If the Navy believes it must commence emergency activities without delay, the Navy shall attempt to contact the State’s project managers or, if the project managers are unavailable, their respective supervisors, prior to commencing such activities. Within 60 days after initiation of the fieldwork, the Navy will furnish to the State an Action Memorandum addressing the information provided in the oral notification, and any other information required pursuant to applicable state law for such actions.

d. If the emergency arises from activities conducted pursuant to this Agreement, the Navy shall then take immediate action to notify the appropriate state and local agencies and affected members of the public.

e. If any Party determines that there may be an endangerment to the public health or welfare or the environment because of an actual or threatened release of hazardous substances, hazardous wastes, hazardous constituents at or from the Facility, the State may request that the Navy take such response actions as may be necessary to abate such danger or threat and to protect the public health or welfare or the environment.

11.2. Work Stoppage

a. In the event that either Party determines that activities conducted pursuant to this Agreement will cause or otherwise be threatened by a situation that may present an endangerment to public health, welfare or the environment at or near the Facility, that Party may propose the suspension of such activities, and activities may be stopped as per the Parties’ agreement. If the Parties do not agree, the activities shall be stopped in accordance with the proposal and the dispute

shall be immediately referred to DTSC's Branch Chief, Office of Military Facilities, Northern California Region, and the RWQCB's Division Chief, Groundwater Protection and Waste Containment Division for a work stoppage determination. The Navy may dispute the State's determination in accordance with Section 21.9 (Expedited Dispute Resolution).

b. In the event that the State determines that a removal action being managed by the Navy as an emergency removal action should be managed as a time critical removal action, a non-time critical removal action or a remedial action, the State may propose the suspension or alteration of the action, and the action shall be stopped as per the Parties' agreement. If the Parties do not agree, the activities shall be stopped in accordance with the proposal and the matter shall be immediately referred to DTSC's Branch Chief, Office of Military Facilities, Northern California Region, and the RWQCB's Division Chief, Groundwater Protection and Waste Containment Division for a work stoppage determination. The Navy may dispute the State's determination in accordance with Section 21.9 (Expedited Dispute Resolution).

11.3. Removal Actions

a. All removal actions conducted at the Facility shall be subject to applicable state and federal law.

b. Nothing in this Agreement shall alter the State's authority with respect to removal actions conducted at the Facility.

c. The Navy shall provide the State with timely notice and opportunity to review, comment, and approve all proposed removal actions. If the Parties agree to pursue a removal action, the date of the agreement can be based upon the Navy's receipt of written approval from the State or upon verbal agreement between the Parties.

d. Time Critical Removal Actions ("TCRAs"). For purposes of this Agreement, "time critical removal action" means a physical condition as to which a response action needs to be initiated within six months after the Parties' agreement that the action should be undertaken as a TCRA. The Navy shall submit time critical removal action documents to the State for review and approval as follows:

(1) The Navy shall submit a draft Action Memorandum and Workplan, so that it is received by the State within 45 days of the agreement date.

(2) The State shall review the draft Action Memorandum and workplan and transmit written comments, so the Navy receives them within 90 days of the agreement date.

(3) The Navy shall revise and submit a revised draft Action Memorandum and workplan so that it is received by the State within 105 days of the agreement date.

(4) The State shall review and transmit comments on the revised draft Action Memorandum and workplan so the Navy receives them within 135 days of the agreement date. All comments will be discussed and addressed prior to commencement of the public comment period.

(5) The State's comments during the 15-day review period may be transmitted orally, by meeting or telephone, and the State will attempt in good faith to provide written confirmation of comments within ten (10) days of the close of the review period.

(6) A 30-day public comment period will be initiated for the revised draft Action Memorandum and workplan and the CEQA document no later than 130 days after the agreement date.

(7) No later than the scheduled commencement of fieldwork, the Parties shall respond jointly to comments received on the revised draft Action Memorandum and workplan during the public comment period.

(8) The State shall respond to comments on CEQA documents.

(9) The State will advise the Navy of any comments received during the CEQA public comment period and the Parties will work together to revise the revised draft final Action Memorandum and workplan, where appropriate, to account for comments received during the public comment period during the ten days following the conclusion of the public comment period. The Navy will submit this revision as a draft final Action Memorandum and workplan to the State at the conclusion of the ten day period.

(10) Where appropriate, a public meeting may be held during the public comment period.

(11) The State will notify the Navy of its approval or disapproval within ten (10) days after the State receives the draft final Action Memorandum and workplan.

(12) The State's determination is subject to the expedited dispute resolution process set out in Section 21.9.

e. Non-time critical removal actions. Non time critical removal actions are all removal actions that are neither emergency removal actions nor time critical removal actions. The Navy will submit non-time critical removal action documents to the State for review and approval in accordance with Section 10 (Document Review and Approval).

f. All activities related to ongoing Interim Measures ("IM")/removal actions shall be reported by the Navy in status reports as described in Section 9 (Project Managers).

12. DEADLINES AND CONTENTS OF SITE MANAGEMENT PLAN

12.1. In order to ensure that the work to be performed under this Agreement is accomplished in a timely manner, the SMP shall be prepared in accordance with the provisions set forth in this section. The Parties agree to establish deadlines consisting of (i) near term milestones for the current fiscal year ("FY"), the budget year (FY+1) and the planning year (FY+2); (ii) out year milestones for the

years occurring after the planning year until the completion of the cleanup or phase of the cleanup (FY+3 and beyond); and (iii) project end dates for the completion of major portions of the cleanup or for the cleanup as a whole.

12.2. Near term milestones for performance of work and submittal of documents within the current FY are enforceable. Near term milestones, out year milestones and project end dates will not change without the Parties' agreement, unless in accordance with the procedures outlined in Section 19 (Extensions). Out year milestones and project end dates shall not be enforceable until they become near term milestones for the current FY in accordance with the terms of Section 13.4; provided, however, if an activity is fully funded in the current FY, milestones associated with performance of work and submittal of documents associated with such activity (even if they extend beyond the current FY) shall be enforceable. For the purposes of this Agreement, a fiscal year is the yearly time frame used by the United States Government that commences on October 1 and ends September 30th of the following calendar year.

12.3. The SMP establishes deadlines out to the project end date for response actions or corrective actions and the submittal of documents pursuant to this Agreement. Pursuant to Section 6 (RCRA-CERCLA Coordination) the SMP outlines all activities and associated documentation to be undertaken at the Facility for CERCLA response actions which would otherwise be handled as RCRA corrective actions. The SMP incorporates all deadlines and target dates contained in approved workplans. All schedules approved in future workplans immediately become incorporated in the SMP.

12.4. Deadlines in the SMP reflect the priorities agreed to by the Parties, in consultation with stakeholders. Site activities have been prioritized by weighing and balancing a variety of factors including, but not limited to:

- a. the relative risk considerations for the Site,
- b. potential or future use of the Facility,
- c. ecological impacts,
- d. intrinsic and future value of affected resources,
- e. cost effectiveness of the proposed activities,
- f. regulatory requirements,
- g. environmental justice considerations, and
- h. actual and anticipated funding levels.

While deadlines should not be driven by budget targets, such targets should be considered. In setting and modifying deadlines, the Parties will make good faith efforts to accommodate federal fiscal constraints, which include budget targets established by the Navy.

12.5. The SMP includes (and shall be amended annually to include):

a. Actions necessary to mitigate any immediate threat to human health or the environment;

b. A discussion of all currently identified Site, IAS, UST OR OWSs (which may be grouped into Operable Units for RCRA-CERCLA coordination purposes), petroleum UST or AST, and petroleum contaminated sites, as listed in Attachment B, covered or identified pursuant to this Agreement;

c. Activities and schedules for corrective actions covered by the SMP. Activities included, at a minimum, are:

(1) Near term milestones for the performance of work and submittal of all documents in the three-year SMP period,

(2) Out year milestones for all documents covered in the SMP for the years FY+3 through the project end date,

(3) Schedule for initiation of interim measures, removal actions, corrective measures and any initiation of other planned corrective action(s) covered by this Agreement, and

(4) Project end dates for the completion of any planned corrective action(s) covered by this Agreement.

d. If the development of a document is fully funded in the first year of the three-year period covered by the SMP, enforceable deadlines for submittal of that draft document may extend beyond the current fiscal year as reflected in the SMP.

12.6. Initial near-term milestones for the Agreement are set forth in the schedule in Attachment C. These near-term milestones shall remain in effect unless amended through the development and the State review and approval of the SMP as described below.

12.7. The draft SMP shall be developed by the Parties and submitted within 90 days after execution of this Agreement to the State for approval.

12.8. The SMP shall be amended on a yearly basis as provided in Section 13 (Budget Development and Amendment of Site Management Plan). All subsequent Amendments to the SMP shall meet all of the requirements set forth in this section.

12.9. The State shall in good faith attempt to provide written approval or comments within 30 days of receipt of the draft and amended SMP. The Navy shall in good faith coordinate with the State to resolve comments, if any, and finalize the SMP.

12.10. The enforceable deadlines established pursuant to this section and Section 13 (Budget Development and Amendment of Site Management Plan) shall be incorporated into the SMP attached to this Agreement.

12.11. The deadlines established in accordance with this section and Section 13 (Budget Development and Amendment of Site Management Plan) may be extended during the SMP review process by following the procedures outlined in Sections 12.4 - 12.7. All other extensions shall be governed pursuant to Section 19 (Extensions) of this Agreement. Possible bases for extension of the deadlines, as determined by the Parties' agreement, include but are not limited to the identification of significant new site conditions at this Facility, reprioritization of activities under the Agreement that are caused by changing priorities or new site conditions elsewhere in the Navy, and reprioritization of activities under this Agreement caused by budget adjustments (e.g., rescissions, inflations adjustments, and reduced Congressional appropriations).

13. BUDGET DEVELOPMENT AND AMENDMENT OF SITE MANAGEMENT PLAN

13.1. Definitions:

a. "Deadline" or "milestone" shall mean a time limitation specifically established or provided for under the terms of the Agreement or the SMP for performance of work and submittal of documents and shall not include target dates. Deadlines shall include "near term milestones," "out year milestones" and "project end dates," as such terms are defined below.

b. "Near term milestones" shall mean the dates established by the Parties in the SMP for the submittal of documents and performance of work within the current fiscal year (FY), the next fiscal year or "budget year" (FY+1) and the year for which the budget is being developed or "planning year" (FY+2). The Parties recognize that milestones in the current fiscal year are enforceable.

c. "Out year milestones" shall mean the dates established by the Parties in the SMP in consultation with public stakeholders, for the submittal of documents within those years occurring after the "planning year" until the completion of the cleanup or phase of the cleanup (FY+3 through project end date, as defined below).

d. "Project end dates" shall mean the dates established by the Parties in the SMP in consultation with public stakeholders, for the completion of major portions of the cleanup or completion of the cleanup of the entire Facility.

13.2. Funding Sources

a. The Parties intend that all the Navy's obligations arising under this Agreement will be fully funded. The Navy agrees to seek sufficient funding through the Department of the Navy budgetary process to fulfill its obligations under this Agreement.

b. The Navy believes that funds authorized and appropriated annually by Congress under the Defense Appropriation Act, or other applicable appropriation, or funds resulting from insurance claims in accordance with any existing ESCAs found in Attachment D, will be the exclusive source of funds for activities required by this Agreement consistent with SARA Section 211, 10 U.S.C. Chapter 160.

c. In accordance with CERCLA Section 120(e)(5) (42 U.S.C. Section 9620(e)(5)) and 10 U.S.C. Section 2706, the Navy shall submit the specific cost estimates and budgetary proposals associated with the implementation of this Agreement to Department of Defense ("DoD") for inclusion in its annual report to Congress.

d. Any requirement for the payment or obligation of funds by the Navy established by the terms of this Agreement shall be subject to the availability of appropriated funds and the provisions of 10 U.S.C. Section 2703. No provision of this Agreement shall be interpreted to require obligation or payment of funds in violation of the Anti-Deficiency Act, 31 U.S.C. Section 1341. In cases where payment or obligation of funds would constitute a violation of the Anti-Deficiency Act, the dates established requiring the payment or obligation of such funds shall be appropriately adjusted.

e. During any year in which the applicable appropriation is inadequate to meet the total Navy obligations and requirements under this Agreement, the Navy will, in consultation with the State, prioritize and allocate that year's appropriation consistent with Section 12 (Deadlines and Contents of Site Management Plan).

13.3. The Department of the Navy, a federal agency, is subject to fiscal controls, hereinafter referred to as the Future Year Defense Plan ("FYDP"). The FYDP is a budgetary plan which covers a set six-year period and which feeds into the President's Executive Branch budget. The process for reviewing and adjusting the FYDP to (i) meet program requirements and (ii) conform to Office of Management and Budgets ("OMB") fiscal plans, is called the Program Objective Memorandum ("POM") process. Although the POM process technically occurs at two-year intervals, for purposes of this Agreement one may assume that the FYDP undergoes an annual POM-like review. To prepare for the development of the FYDP, the POM process is undergone in advance of the first year of the FYDP to prepare for the development of the FYDP.

13.4. The Parties acknowledge that planning, programming and budgeting is a multi-year process. The Parties agree that they should be involved in the full cycle of planning, programming, and budgeting activities, although the State is under no obligation to be so involved.

13.5. Funding Levels

a. The Parties may meet to review the FYDP controls, develop a list of requirements/work to be performed at the Site for inclusion in the Navy's POM process, and participate in developing Engineering Field Activity West or its successor's ("EFAWEST") budget submission to the President's proposed budget, based on POM decisions for the year currently under consideration. When developing the President's proposed budget, the Navy agrees to notify the State that EFAWEST's budget controls have been received within ten working days of receiving those

controls. Within five days of such notification, the Navy also agrees to consult with the State on the President's proposed budget. This consultation shall occur prior to EFAWEST's initial budget submission to the Naval Facilities Engineering Command ("NAVFAC") headquarters.

b. In the event that the Parties cannot agree on funding levels required to perform all work outlined in the SMP, the Parties agree to make reasonable efforts to resolve these disputes informally. If the Parties cannot reach agreement, EFAWEST, through NAVFAC, agrees to elevate the budget request to the Office of the Chief of Naval Operations ("CNO") Navy Headquarters (after incorporating as much input from the Parties as possible). In addition, if EFAWEST's budget submission to NAVFAC does not include sufficient funds to complete all work in the existing SMP, after any agreed-upon modifications, the Navy's budget submission shall also include supplemental reports that fully disclose the work required by the SMP, but not included in the original budget request. These supplemental reports shall accompany the cleanup budget that the Navy submits from EFAWEST through successive levels from NAVFAC to CNO and to the DoD Comptroller.

13.6. EFAWEST Budget

a. The Navy shall forward to the State documentation of the budget requests (and any supplemental reports as outlined in Section 13.2(b) above) for the site, as submitted by EFAWEST to NAVFAC, and by NAVFAC to CNO, within 14 days after the submittal of such documentation to CNO.

13.7. Amended Site Management Plan

a. No later than June 15 of each year after the development of the SMP, the Navy shall submit a draft Amended SMP to the State which will propose deadlines to take effect in the next FY. Unless the Parties agree to modify the deadlines as provided below, the draft Amended SMP should carry forward all near term milestones, out year milestones and project end dates included in the existing SMP. Therefore, in most cases, near term milestones in the existing SMP for FY+1 and FY+2 shall be proposed as the near term milestones for FY and FY+1 in the draft Amended SMP. In addition, the Navy shall examine the newly proposed FY and FY+1 milestones, funding circumstances (including budget targets and/or guidance), and the factors outlined in Section 12.4 to evaluate whether the previously agreed upon project end dates and out year milestones for FY+3 (i.e., what is FY+3 under the existing SMP and will become FY+2 under the Amended SMP) should become near term milestones.

b. Any proposed changes to milestones must be explained in a cover letter to the draft Amended SMP. Moreover, any changes to near term milestones, out year milestones or project end dates require the Parties' agreement. The draft Amended SMP should reflect any decisions made by the Parties during the planning, programming, and budgeting consultation process outlined in Sections 12 and 13, and shall be based upon the assumption that all remedial requirements for the Facility submitted during the development of the President's budget for the upcoming fiscal year will be fully funded. Any disagreement over adjustment of deadlines pursuant to this section shall be resolved in the context of the draft final amendment to the SMP. Additionally, the yearly Amended SMP shall contain revised target dates for the submission of documents during the

upcoming three fiscal years. The yearly Amendment to the SMP will incorporate any SWMUs, Site, IAS, UST OR OWS newly identified pursuant to this Agreement.

c. The Parties shall meet as necessary to discuss the draft Amended SMP. Within 30 days of receipt of the draft Amended SMP, the State shall review the draft Amended SMP and provide comments to the Navy. If the State submits comments and is not satisfied with the draft Amended SMP, the Parties will meet within 15 days of Navy's receipt of comments on the draft Amended SMP to discuss the draft Amended SMP.

d. Within 30 days of receipt of the State's comments on the draft Amended SMP, the Navy shall make revisions and issue a revised draft ("draft final SMP"). The State shall approve or disapprove the draft final SMP within 30 days after it receives it.

e. The Navy will work in good faith with the State to reach consensus on the reprioritization of work made necessary by any yearly appropriation shortfalls or other circumstances described in paragraph 12.8. This may include working with representatives of the EPA regional offices and the states located within the geographical area administered by EFAWEST to reach consensus on the reprioritization of work made necessary by any yearly appropriation shortfalls or other circumstances described in paragraph 12.8.

f. Within 30 days after EFAWEST has received official notification of EFAWEST's allocation based on the current year's applicable appropriation, the Navy shall determine if planned work (as outlined in the draft final SMP) can be accomplished with the allocated funds. If the allocated funds are sufficient to complete all planned work for that fiscal year and no changes to the draft final SMP are required, the Navy shall immediately forward a letter to the State indicating that the draft final SMP has become the final SMP.

g. In the event that the Navy determines within the 30-day period specified above or receives mid-year notification of a Congressionally mandated rescission or reprogramming of funding such that the allocated funds are not sufficient to accomplish the planned work for the Site (an appropriation shortfall), the Navy shall immediately notify the State and the project managers shall meet within 30 days to determine if planned work (as outlined in the draft final SMP) can be accomplished through rescoping or rescheduling activities in a manner that does not cause previously agreed upon near term milestones and out year milestones to be missed or through developing and implementing new cost-saving measures. If, during this 30-day consultation period, the Parties determine that rescoping or implementing cost-saving measures are not sufficient to offset the appropriation shortfall and the Parties agree that near term milestones, out year milestones and project end dates should be modified, the Parties shall discuss these changes and develop modified deadlines, based on the prioritization process in Section 12.4. If the Parties do not agree on appropriate modifications, the State retains its authority not to concur with a request to modify or extend existing schedules and deadlines.

h. The Navy shall submit a revised draft final SMP within 30 days of the end of the consultation period. The revised draft final SMP shall reflect the State's input. The State shall have 30 days to review the revised draft final SMP, and will notify the Navy in writing whether it

approves or disapproves the revised draft final SMP. If the State approves the revised draft final SMP, it shall become the final SMP.

i. If the State disapproves the revised draft final SMP, the Navy may submit the issue to expedited dispute resolution as set forth in Section 21.10. Within 15 days after the conclusion of dispute resolution, the Navy shall revise and reissue the final SMP as necessary. Any dispute under this section shall not affect the timely adherence to the terms of this Agreement, including schedules, except as specifically provided herein.

14. SUBMITTALS

14.1. Beginning with the fourth full month following the effective date of this Agreement, until suspended by the State in writing, the Navy shall provide the State with quarterly progress reports of corrective action, removal action and remedial action activities completed, in progress and to be conducted pursuant to this Agreement. Progress reports are due on the tenth day of the month following the end of the previous quarter. The progress reports shall conform to the Scope of Work for Progress Reports. The Parties may adjust the frequency of progress reporting to be consistent with site-specific activities.

14.2. Any report or other document submitted by the Navy pursuant to this Agreement shall be signed and certified by the Navy's project manager or other duly authorized Navy representative.

14.3. The certification required above shall be in the following form:

"I certify that the information contained in or accompanying this submittal is true, accurate, and complete. As to those portions of this submittal for which I cannot personally verify the accuracy, I certify that this submittal and all attachments were prepared at my direction in accordance with procedures designed to assure that qualified personnel properly gathered and evaluated the information submitted. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

Signature: _____

Name: _____

Title: _____

Date: _____

14.4. The Navy shall provide two (2) copies of all documents to DTSC and one (1) copy of all documents to the RWQCB, including but not limited to, workplans, reports, and correspondence of 15 pages or longer. Submittals specifically exempted from this copy requirement are all progress reports and correspondence of less than 15 pages, of which one copy is required. The Navy will provide up to 3 additional copies to the State upon request.

14.5. Unless otherwise specified, all reports, correspondence, approvals, disapprovals, notices, or other submissions relating to this Agreement shall be in writing and shall be sent to the respective Project Managers. All submittals to DTSC and the RWQCB required by this Agreement shall be printed double sided whenever practicable on recycled paper.

15. CONTRACTOR/CONSULTANT QUALIFICATIONS

15.1. All work performed pursuant to this Agreement by a contractor to the Navy shall be under the direction and supervision of a professional engineer or registered geologist, registered in California, with expertise in contaminated site cleanup. Any Navy contractor or consultant shall have the technical expertise sufficient to fulfill his or her responsibilities. Within 14 days after the effective date of this Agreement, the Navy shall notify the State's project manager in writing of the name, title, and qualifications of the professional engineer or registered geologist and of any contractors or consultants and their personnel to be used in carrying out the terms of this Agreement.

16. QUALITY ASSURANCE

16.1. All sampling and analyses performed by the Navy under this Agreement shall follow applicable state and U.S. EPA guidance for sampling and analysis. Workplans shall contain quality assurance/quality control and chain of custody procedures for all sampling, monitoring, and analytical activities. Any deviations from the approved workplans must be approved by the State prior to implementation, must be documented, including reasons for the deviations, and must be reported in the applicable report (e.g., RFI Report). The Navy may secure telephone approval from the appropriate State project manager(s) for fieldwork changes.

16.2. The Navy must use California state-certified analytical laboratories for all laboratory work performed pursuant to this Agreement. Upon the State's approval, the Navy may use non-California certified analytical laboratories in those cases where no California state approval laboratory is available or able to conduct chemical analyses for work required under this Agreement.

16.3. All workplans required under this Agreement shall include data quality objectives for each data collection activity to ensure that data of known and appropriate quality are obtained and that data are sufficient to support their intended uses.

16.4. The Navy shall monitor to ensure that high quality data are obtained by its consultant or contract laboratories. The Navy shall ensure that laboratories it used or uses for analysis perform such analysis according to the latest approved edition of "Test Methods for Evaluating Solid Waste, (SW-846)," or other methods deemed satisfactory to the State. If methods other than U.S. EPA methods are to be used, the Navy shall specify all such protocols in the applicable workplan (e.g., RFI Workplan). The State may reject any data that do not meet the requirements of the approved workplan, U.S. EPA analytical methods, or quality assurance/quality control procedures, and may require resampling and analysis.

16.5. The Navy shall ensure that the California state-certified laboratories it used or uses for analyses have a quality assurance/quality control program. The State may conduct a performance and quality assurance/quality control audit of the laboratories chosen by the Navy before, during, or after sample analyses. Upon the State's request, the Navy shall have its selected laboratory perform analyses of samples provided by the State to demonstrate laboratory performance. If the audit reveals deficiencies in a laboratory's performance or quality assurance/quality control procedures, resampling and analysis may be required by the State.

17. SAMPLING AND DATA/DOCUMENT AVAILABILITY

17.1. The Navy shall submit to the State the results of all sampling and/or tests or other data generated by its employees, agents, consultants, or contractors pursuant to this Agreement, upon the State's request.

17.2. The Navy shall notify the State in writing at least seven (7) days prior to beginning each separate phase of fieldwork approved under any document required by this Agreement.

17.3. At the State's request, the Navy shall provide or allow the State or its authorized representative to take split or duplicate samples of all samples collected by the Navy pursuant to this Agreement. Similarly, at the Navy's request, the State shall allow the Navy or its authorized representative to take split or duplicate samples of all samples collected by the State under this Agreement.

18. CERTIFICATION

18.1. When the Navy believes that the final remedial and corrective action(s) for a given site have been completed in accordance with the requirements of this Agreement, it shall so advise the State in writing, and shall schedule and conduct a close-out inspection to be attended by the Navy and the State. Within 30 days of each close-out inspection, the Navy shall submit a Close-Out Inspection Report, signed by the Navy's signatory authority or designee, certifying that the remedial and corrective action(s) have been completed in full satisfaction of the requirements of this Agreement. The Navy shall also submit a request for State certification of the completion of the remedial and corrective action.

18.2. The Close-Out Inspection Report shall contain a summary of the contaminated site, the remedial and corrective action(s) undertaken for each, the post-remedial activities planned for each, and any noteworthy observations made during the close-out inspection. Within 90 days of receipt of the Navy's request for certification, the State shall advise the Navy in writing that it:

a. certifies that the remedial and corrective action(s) has been completed in accordance with this Agreement, based on conditions known at the time of certification; or

b. denies the Navy's request for certification, stating in full the basis of its denial and detailing the additional work needed for remedial and corrective action completion and certification.

18.3. If the State denies the Navy's request for certification that all remedial and corrective action(s) have been completed in accordance with this Agreement, the Navy may invoke dispute resolution within 20 days of receipt of the State's written denial to review the State's determination on certification or additional work needed. If the State's denial of certification is upheld in Dispute Resolution, the Navy will perform the requested additional work.

18.4. If dispute resolution is not invoked, or if the State's denial of certification is upheld in dispute resolution, the Navy shall propose a deadline for the submittal of a draft supplemental workplan. The draft supplemental workplan shall contain a schedule for completion of the additional required work. After performing the additional work, the Navy may resubmit a request for certification to the State. The State shall then grant or deny certification pursuant to the process set forth in this section.

19. EXTENSIONS

19.1. The Navy may request an extension of any deadline for good cause. The request shall be made at least 7 days prior to the deadline, if practicable, and shall specify:

- a. the timetable, deadline or schedule that is sought to be extended;
- b. the length of the extension sought;
- c. the good cause for the extension; and
- d. the extent to which any related timetable and deadline or schedule would be affected if the extension were granted.

19.2. Good cause means:

- a. an event of force majeure as (as defined in Section 20, *infra*)
- b. a delay caused by the State's failure to meet any requirement of this Agreement provided that the delay is directly related to the matter that is the subject of the proposed extension;
- c. a delay caused by the good faith invocation of dispute resolution or the initiation of judicial action;
- d. a delay caused, or likely to be caused, by an extension of another timetable and deadline or schedule;
- e. a delay in the State's review of a permit application, workplan, decision document, or issuance of a permit or other forms of authorization required to perform activities undertaken pursuant to this Agreement;
- f. a stop-work order issued by the State;

g. unanticipated breakage or accident to machinery, equipment or lines of pipe despite reasonably diligent maintenance;

h. unusual delay in transportation;

i. inability to obtain, at reasonable cost and after exercise of reasonable diligence, any necessary authorizations, approvals, permits, or licenses due to action or inaction of any governmental agency or authority other than the Navy;

j. delays caused by compliance with applicable statutes or regulations governing contracting, procurement or acquisition procedures, despite the exercise of reasonable diligence; or

k. any other event or series of events mutually agreed to by the Parties as constituting good cause.

19.3. Absent agreement of the Parties with respect to the existence of good cause, the Navy may seek and obtain a determination through the dispute resolution process that good cause exists.

19.4. Within seven (7) days of receipt of a request for an extension of a timetable, deadline or schedule, the State shall advise the Navy in writing of its position on the request. If the State does not concur in the requested extension, it shall include in its statement of nonconcurrence an explanation of the basis for its position.

19.5. If the State grants the extension, the Navy shall extend the affected timetable and deadline or schedule accordingly. If the State disapproves the requested extension, the timetable and deadline or schedule shall not be extended. The Navy may submit the State's decision to dispute resolution in accordance with Section 21 (Dispute Resolution).

19.6. If the State becomes aware that they will not meet a review deadline the State shall notify the Navy of:

a. the specific document and deadline to be extended;

b. the length of the extension needed;

c. the reason for the extension; and

d. the extent to which any related timetable and deadline or schedules would be affected.

19.7. In any dispute resolution, the Navy shall bear the burden of proof on the issue of whether it exercised due diligence to avoid the situations set out in 19.2.g, h, i, or j, above.

20. FORCE MAJEURE

20.1. A force majeure shall mean any event arising from a cause not foreseeable and beyond the control of the Navy, which could not be avoided or overcome by due diligence and which delays or prevents performance by a deadline that exists because of this Agreement. An event of force majeure shall excuse the Navy from compliance with the schedules in the SMP. Examples of force majeure include:

- a. acts of God, fire, war, insurrection, civil disturbance, or explosion;
- b. adverse weather conditions that could not be reasonably anticipated;
- c. national conflict or emergency declared by the President or Congress and affecting the Navy;
- d. restraint by court order or order of public authority;
- e. a strike, lockout or other labor difficulty; or
- f. insufficient availability of appropriated funds due to Congressionally mandated cuts or rescissions, provided Navy shall have made timely and adequate requests for sufficient funding as required by this Agreement.

20.2. (Reserved).

20.3. When circumstances which may delay or prevent the completion of the Navy's obligation under this Agreement are caused by a force majeure event, the Navy shall notify the State's project managers orally of the circumstances within 48 hours after the Navy first became aware of these circumstances. Within 15 days of the oral notification, the Navy shall deliver a written explanation of the cause(s) of any actual or expected delay and the anticipated duration of any delay to the State. The Navy shall exercise its best efforts to avoid or minimize any such delay and any effects of such delay.

20.4. The State may invoke expedited dispute resolution (Section 21.10) with respect to the Navy's claim of force majeure based on lack of funding, including a dispute on the issue of the Navy's good faith efforts to obtain the funding.

20.5. An event of force majeure does not affect obligations of the Navy that are outside the scope of this Agreement.

21. DISPUTE RESOLUTION

21.1. The Parties will use their best efforts to resolve all disputes informally. DTSC and RWQCB will determine, and notify the Navy in writing, which State Party is the lead regulatory agency, depending upon the nature of the issue disputed. Except as specifically set forth elsewhere in this

Agreement, the procedures contained in this section shall apply to resolution of disputes arising under this Agreement. If a Party fails to follow the procedures contained in this section, it shall have waived its right to further consideration of the disputed issue.

21.2. Within 15 days after the State notifies the Navy that the State disapproves a document, or within 15 days after an action that generates a dispute, the Party invoking dispute resolution shall submit a written statement of the dispute, setting forth the nature of the dispute, the work affected by the dispute and the technical, legal or factual information upon which that Party is relying to support its position, to the other Parties' Tier I dispute official. The Tier I dispute officials are the Branch Chief, Northern California Office of Military Facilities, DTSC (or to his/her designee), the Head of Environmental Programs, EFAWEST, and the Division Chief, Groundwater Protection and Waste Containment Division, RWQCB (or to his/her designee).

21.3. The State and the Navy shall have 21 days from the State's receipt of the written request to resolve the dispute through formal discussions. The Parties may agree to extend this time period. During such period, the Parties may meet or confer to discuss the dispute.

21.4. After the formal discussion period, the Tier I dispute officials provide a written decision on the dispute. The written decision will reflect any agreements reached during the formal discussion period and be signed by the appropriate officials.

21.5. If the Tier I officials cannot reach agreement within the time allotted, a Party may seek additional review of the matter by the Tier II Senior Executive Committee ("SEC") by forwarding a copy of the written request for dispute resolution, along with a request for review, to the SEC within 15 days. The Navy's representative on the SEC is the Commander, SOUTHWESTNAVFACENGCOM, or his/her designee. The DTSC representative is the Division Chief, Office of Military Facilities or his/her designee. The RWQCB representative is the Division Chief, Groundwater Protection and Waste Containment Division, RWQCB (or to his/her designee).

21.6. The SEC shall have 21 days from receipt of the written request to resolve the dispute through formal discussions. If the SEC is not able to resolve the dispute within the allotted time, a Party may seek additional review by forwarding a copy of the written request for dispute resolution, along with a request for review, to the Deputy Assistant Secretary of the Navy (Environment), the DTSC Director, and the RWQCB Executive Officer, along with a request for review. These Navy and State representatives, or their respective designees, shall meet and attempt to resolve the dispute within 21 days after receipt of the State's SEC decision.

21.7. Within 21 days of resolution of a dispute pursuant to the non-expedited dispute resolution procedures, the Navy shall incorporate the resolution and final determination into the appropriate plan, schedule, document or action.

21.8. If the Parties are ultimately unable to resolve the issue in dispute in accordance with the non-expedited procedures, the State shall issue a written statement of the status of the dispute. The State reserves its rights to take any action available under applicable state and federal law. The Navy reserves its rights to take any action or to assert any defense available to it under applicable state and federal law.

21.9. Expedited Dispute Resolution

a. Issues subject to expedited dispute resolution by the terms of this Agreement shall be submitted directly to the SEC within five (5) days after the appropriate State party notifies the Navy that the State disapproves a document, or within five (5) days after an action that generates a dispute. The SEC shall have ten (10) days to resolve the dispute. If the SEC is not able to resolve the dispute, the State will issue a written decision within five (5) days following the close of this period.

b. Within seven (7) days after the Navy receives the State's written decision, the Navy may seek additional review of the State's written decision by forwarding a copy of the State's written decision to the Deputy Assistant Secretary of the Navy (Environment and Safety), the DTSC director, and the RWQCB Executive Officer, along with a request for review. These Navy and State representatives, or their respective designees, shall meet and attempt to resolve the dispute within ten (10) days after receipt of the State's SEC decision.

c. Within 21 days of resolution of a dispute pursuant to the expedited procedures, the Navy shall incorporate the resolution and final determination into the appropriate plan, schedule, document or action.

d. If the Navy and the State are ultimately unable to resolve the issue in dispute in accordance with this section, the State shall issue a written statement of the status of the dispute. The State reserves its rights to take any action available to it under applicable state and federal law. The Navy reserves its rights to take any action or to assert any defense available to it under applicable state and federal law.

21.10. During the pendency of regular or expedited dispute resolution, work affected by the dispute may be discontinued if the Navy makes such a request to the State. The work will stop unless the State makes a determination that work stoppage would present an endangerment to public health or welfare or the environment, in accordance with Section 11.2 (Work Stoppage). The existence of a dispute shall not excuse, toll, or suspend any other compliance obligation or deadline required pursuant to this Agreement.

21.11 For purposes of this section, each Party's representative must be authorized to bind that Party to any resolution reached jointly by the Parties.

22. OTHER CLAIMS

22.1. Nothing in this Agreement shall restrict the State from taking any action under RCRA, CERCLA, CWA, state law, or other environmental statutes and regulations for any matter not specifically part of the work performed under this Agreement.

22.2. Nothing in this Agreement shall constitute or be construed as a bar, or a discharge, or a release, from any claim, cause of action or demand in law or equity by or against any person, firm, partnership, or corporation not a signatory to this Agreement for any liability it may have arising out of, or relating in any way to the generation, storage, treatment, handling, transportation, release,

disposal or discharge of any hazardous substances, hazardous waste, pollutants, contaminants or wastes found at, taken to, or taken from the Facility. Specifically, this Agreement does not bar any claim for:

- a. natural resources damage assessments, or for damage to natural resources; or
- b. liability for disposal of any Hazardous Substances or waste material taken from the Facility.

22.3. The State shall not be held as a party to any contract entered into by the Navy to implement the requirements of this Agreement.

22.4. The Navy shall notify the appropriate federal and state natural resource trustees of potential damages to natural resources resulting from releases or threatened releases under investigation, as required by CERCLA Section 104(b)(2) (42 U.S.C. Section 9604(b)(2)), and Section 2(e)(2) of Executive Order 12580. Except as provided herein, the Navy is not released from any liability which it may have pursuant to any provisions of state and federal law, including any claim for damages for destruction of, or loss of, natural resources.

23. RESERVATION OF RIGHTS

23.1. Notwithstanding anything in this Agreement, the State may initiate any action or pursue any legal or equitable remedies available to it under applicable state or federal law, including the issuance of administrative orders or taking any other enforcement actions to require additional response actions by the Navy in the event that: (a) conditions previously unknown or undetected by the State arise or are discovered at the Facility; or (b) the State receives additional information not previously available concerning the premises which it employed in reaching this Agreement; or (c) the State determines that the implementation of the requirements of this Agreement are no longer protective of public health and the environment; or (d) the State discovers the presence of conditions on the Facility which may constitute an imminent and substantial danger to the public health, welfare, or the environment; or (e) the Navy fails to meet any of its obligations under this Agreement; or (f) the Navy fails or refuses to comply with any applicable requirement of CERCLA or RCRA or state laws.

23.2. The Parties reserves all of their statutory and regulatory powers, authorities, rights, and remedies, both legal and equitable, which may pertain to failures to comply with any of the requirements of this Agreement. This Agreement shall not be construed as a covenant not to sue, release, waiver, or limitation on any rights, remedies, powers, or authorities, civil or criminal, that the Parties have under any statutory, regulatory, or common law authority.

23.3. The State reserves the right to disapprove work performed by the Navy pursuant to this Agreement and to request that the Navy perform additional tasks. This Agreement is not intended to change the legal relationship and respective legal authorities, defenses, or remedies of the Parties, nor to foreclose consideration of issues related to the scope of the State's authority in the dispute resolution process set out above at Section 21, or any legal proceedings.

23.4. The State reserves the right to perform any portion of the work consented to herein or any additional site characterization, feasibility study, and/or remedial actions it deems necessary to protect human health and/or the environment. The State may exercise its authority under any applicable state or federal law or regulation to undertake response and corrective actions at any time.

The State reserves its right to seek reimbursement from the Navy for costs incurred by the State with respect to such actions. The State will notify the Navy in writing as soon as practicable regarding the decision to perform any work described in this section.

23.5. If the State determines that activities in compliance or noncompliance with this Agreement have caused or may cause a release of hazardous waste and/or hazardous waste constituents and/or wastes, or a threat to human health and/or the environment, or that the Navy is not capable of undertaking any of the work required, the State reserves its rights to order the Navy to stop further implementation of this Agreement for such period of time as the State determines may be needed to abate any such release or threat. The deadlines for any actions required of the Navy under this Agreement affected by the order to stop work shall be extended to take into account the State's actions.

23.6. This Agreement is not intended to be nor shall it be construed to be a permit. The State's approval of any workplan, plan, and/or specification does not constitute a warranty or representation that the workplans, plans, and/or specifications will achieve the required cleanup or performance standards. The Navy's compliance with the terms of this Agreement shall not relieve the Navy of its obligations to comply with the Health and Safety Code, the Water Code, or any other applicable local, state, or federal statute or regulation.

23.7. The Parties, after exhausting their remedies under this Agreement, reserve any and all rights, including the right to raise or assert any defense they may have under any law, where those rights are not inconsistent with the provisions of this Agreement.

24. REAL PROPERTY TRANSFER

24.1. Except as otherwise specifically provided in CERCLA Section 120(h)(3)(B), in other applicable state or federal law, or by written agreement with the State, no change or transfer of any interest in the Facility or any part thereof shall in any way alter the status or responsibility of the Navy under this Agreement.

24.2. The Navy agrees to give the State ninety (90) days notice prior to the sale or transfer by the United States of America of any title, easement, or other interest in the real property affected by this Agreement. The Navy agrees to comply with Section 120 (h) of CERCLA (42 U.S.C. Section 9620 (h)), including the Community Environmental Response Facilitation Act ("CERFA"), and any additional amendments thereof, and with 40 C.F.R. Part 373, if applicable.

24.3. In accordance with DoD Guidance, the Navy agrees to notify the State of all planned leases or property transfers, and to submit Findings of Suitability to Lease ("FOSLs") and Findings of Suitability to Transfer ("FOSTs") documents for the State's review and comment. The Navy also

agrees to submit environmental assessment documents, including but not limited to Site-Specific or Supplemental Environmental Baseline Surveys, in support of the FOSLs and FOSTs. The Navy agrees that any unresolved comments from the State must be included as attachments to the documents. The Navy agrees that all FOSTs are also subject to public notice requirements, and a 30-day public comment period. The Navy agrees to provide copies of the signed FOSTs to the State.

24.4 Early Transfer. It is anticipated that portions of the Facility may be transferred to non-Federal government persons pursuant to CERCLA Section 120(h)(3)(C). Such a transfer is defined in this document as an early transfer of the property. To effect an early transfer of property, the Navy must defer the covenant warranting that all remedial action necessary to protect human health and the environment has taken place (CERCLA Section 120(h)(3)(A)). In the event that the Navy decides to pursue early transfers, the Navy agrees to seek the approval of Governor of the state to defer the CERCLA covenant in accordance with Section 120(h)(3), and to submit Findings of Suitability for Early Transfer ("FOSETs") in accordance with DoD Guidance. An early transfer, pursuant to Section 120(h)(3)(C) of CERCLA, may be made upon a finding by the Governor of the state that the covenant may be deferred. It is anticipated that portions of the Facility, as described below, will be subject to early transfer. Agreements which govern an early transfer include a Consent Agreement between the State, and the proposed new owner, which describes the steps for remediation of the transferred property under the oversight of the State. Certain third parties will assume responsibility for portions of the investigation and remediation responsibility through one or more Environmental Services Cooperative Agreements, which include scopes of work required of the third party. The State will suspend the Navy's obligations pursuant to this Agreement upon execution of a Consent Agreement, for which it is acting as lead regulatory agency, between DTSC, the RWQCB, and the third party. In the event that the State makes a determination of non-compliance pursuant to Health and Safety Code Section 25355.5 with a third party consent decree and after making reasonable efforts to enforce the third party's compliance with the Consent Agreement, the State shall notify the Navy in writing and, within 30 days after the Navy's receipt of such notification, the Navy and the State shall meet and confer to resolve remaining remediation needed on the transferred property that has not achieved regulatory closure. Nothing in this Section 24.4 shall be deemed to abrogate the State's enforcement discretion.

With respect to petroleum UST and petroleum contaminated sites subject to the early transfer, RWQCB will suspend the Navy's obligations pursuant to this Agreement for which it is acting as lead regulatory agency if the third party complies with RWQCB requirements. The RWQCB intends to pursue actions pertaining to cleanup of petroleum UST and petroleum contaminated sites subject to early transfer with the third party. Nevertheless, the Navy retains ultimate responsibility for the cleanup for the petroleum UST, and petroleum contaminated sites subject to early transfer. In the event, after having made a reasonable attempt to enforce compliance with the Cooperative Agreement, the RWQCB makes a determination that the third party is not complying with RWQCB requirements, RWQCB shall notify the Navy in writing, and copy DTSC. Within 30 days after RWQCB notifies the Navy of its determination of non-compliance, the Navy and the State shall meet and confer to resolve remaining remediation needed on the transferred property.

24.5 A narrative description of portions of investigation and remediation responsibility being transferred to third parties as well as any ESCAs and Consent Agreements are included in

Attachment D. Attachment D will be modified as appropriate to reflect any additional early transfers.

24.6 In accordance with Section 120(h) of CERCLA (42 U.S.C. Section 9620(h)) and 40 C.F.R. Part 373, the Navy shall include notice of this Agreement in any Agreement or Memorandum of Understanding that permits any non-Navy activity to function as an operator on any portion of the Facility.

25. CALIFORNIA ENVIRONMENTAL QUALITY ACT

25.1. The State must comply with the California Environmental Quality Act ("CEQA"). The Navy shall provide all information necessary to facilitate any CEQA analysis. The State will determine the applicability of CEQA for each project at the Facility. If the activities are not exempt from CEQA, the State will conduct an Initial Study. Based on the results of the Initial Study, the State will determine if a Negative Declaration or an Environmental Impact Report ("EIR") should be prepared. The State will prepare and process any such Negative Declaration. However, should the State determine that an EIR is necessary, such an EIR may be prepared under a separate agreement between the State and the Navy. The Navy's actions taken pursuant to this paragraph shall not be construed as an admission by the Navy that CEQA governs Navy activities.

26. PERMITS

26.1. The Parties recognize that Section 121(e)(1) of CERCLA provides that no Federal, State, or local permit shall be required for the portion of any removal or remedial action conducted entirely onsite, where such remedial actions is selected and carried out in compliance with CERCLA Section 121. It is the understanding of the Parties that the statutory language is intended to avoid delay of on-site response actions, due to procedural requirements of the permit process. The Parties agree that, to the extent consistent with RCRA and the California Hazardous Waste Control Law (Chapter 6.5 commencing with Section 25100, Division 20, of the Health and Safety Code), no State permit or permit modification will be required under Chapter 6.5 for activities required under any Remedial Action Plan/Record of Decision that the State approves.

26.2. When required, the Navy agrees to seek and implement any federal, state or local permits, including RCRA permits, for operations or processes required to implement activities regulated under this Agreement.

26.3. To the extent that the Navy discharges its RCRA corrective action obligations which relate to the releases or threatened releases of hazardous waste or constituents through CERCLA response actions and proposes a response action, other than an emergency removal action, to be conducted entirely onsite, which in the absence of Section 121(e)(1) of CERCLA and the NCP would require a federal, state or local permit, the Navy shall include in its draft decision document:

- a. identification of each permit which would otherwise be required,

b. identification of the standards, requirements, criteria, or limitations which would have had to be met under each such permit, and

c. an explanation of how the response action proposed will meet the standards, requirements, criteria or limitations identified immediately above.

26.4. The Navy shall notify the State in writing of any permits required for any off-Site treatment or disposal activities it plans to undertake for hazardous wastes originating from NCTS as soon as it becomes aware of the requirement. The Navy shall apply for all such permits and provide the State with copies of all such permits.

27. COMPLIANCE WITH APPLICABLE LAWS

27.1. All actions required to be taken pursuant to this Agreement shall be undertaken in accordance with the applicable requirements of all local, state, and federal laws and regulations. The Navy shall obtain or cause its representatives to obtain all permits and approvals necessary under such laws and regulations. This Agreement shall not in any way relieve the Navy from its obligation to comply with any of the applicable provisions of the California Hazardous Waste Control Law or its implementing regulations, RCRA or its implementing regulations, or any permit, closure or post-closure plan, hazardous waste management requirement, order or agreement issued or entered into thereunder. . The Navy agrees to conduct the appropriate procedures needed to determine that the Navy's corrective action obligations are complete. This Agreement shall not relieve the Navy from its obligation to comply with any other applicable federal, state or local law, regulation, order, permit or any other agreement.

28. ACCESS

28.1. Subject to the Facility's security and safety procedures, the Navy agrees to provide or coordinate access for the State and its representatives at all reasonable times to the Facility and any other property to which access is required for implementation of this Agreement. The Navy shall permit such persons to inspect and copy all records, files, photographs, documents, including all sampling and monitoring data, that pertain to work undertaken pursuant to this Agreement and that are within the possession or under the control of the Navy or its contractors or consultants.

28.2. The Navy shall honor all reasonable requests for access by the State upon presentation of proper credentials. The Navy project manager or his/her designee will provide briefing information, coordinate access and escort to restricted or controlled-access areas, arrange for base passes and coordinate any other access requests which arise.

28.3. The State shall provide reasonable notice (which shall be, if practical, 24 hours advance notice) to the Navy project manager to request any necessary escorts. The Navy shall not unreasonably withhold such permission.

28.4. To the extent that work being performed pursuant to this Agreement must be done beyond the Facility property boundary, the Navy shall use its best efforts to obtain access agreements necessary to complete work required by this Agreement from the present owners of such property within 30 days of approval of any workplan for which access is required. Best efforts as used in this paragraph shall include, at a minimum, a letter by certified mail from the Navy to the present owners of such property requesting an agreement to permit the Navy and the State and its authorized representatives access to such property and, if necessary, offering the payment by the Navy of fair market value in consideration of granting access. Any such access agreement shall provide for access to the State and its representatives. The Navy shall provide the State's project managers with a copy of any access agreements. In the event that an agreement for access is not obtained within 30 days of approval of any workplan for which access is required, or of the date that the need for access becomes known to the Navy, the Navy shall notify the State in writing within 14 days thereafter regarding both the efforts undertaken to obtain access and its failure to obtain such agreements. The State may, at its discretion, assist the Navy in obtaining access. In the event the State obtains access, the Navy shall undertake approved work on such property. The State may determine that additional on-site measures must be taken to address releases beyond the Facility boundary if access to off-site areas cannot be obtained.

28.5. Nothing herein shall be construed as limiting the State's statutory authority for access or information gathering, except as that right may be limited by applicable national security regulations or other state or federal law.

29. ENFORCEABILITY

29.1. Unless limited or qualified elsewhere in this Agreement, all timetables and deadlines shall be enforceable.

29.2. Any final resolution of a dispute pursuant to Section 21 (Dispute Resolution), which establishes a term, condition, timetable, deadline or schedule shall be enforceable, consistent with Section 12 (Deadlines and Contents of Site Management Plan) and Section 23 (Reservation of Rights) of this Agreement.

29.3. Nothing in this Agreement shall be construed as a restriction or waiver of any rights or defenses, including sovereign immunity that the State or the Navy may have under federal or state law.

30. RECORD PRESERVATION

30.1. The Parties shall retain, during the pendency of this Agreement and for a minimum of ten (10) years after its termination, all data, records, and documents that relate in any way to the performance of this Agreement, including pertinent documents concerning hazardous waste management and/or disposal at the Facility. Each Party shall notify the other Party in writing 90 days prior to the destruction of any such records, and shall provide the other Party with the opportunity to take possession of any such records. Such written notification shall reference the effective date and caption of this Agreement and shall be addressed to:

Branch Chief
Northern California Operations
Office of Military Facilities
Department of Toxic Substances Control
8800 Cal Center Dr.
Sacramento, California 95826

Installation Restoration Program Manger
Engineering Field Activity, West, Naval Facilities Engineering Command
2001 Junipero Serra Boulevard, Suite 600
Daly City, California 94014

30.2. If any Party retains or employs any agent, consultant, or contractor for the purpose of carrying out the terms of this Agreement, that Party will require any such agents, consultants, or contractors to provide the other Party a copy of all documents produced pursuant to this Agreement.

30.3. The Navy shall maintain an Administrative Record at EFAWEST. The State may request access to the Administrative Record verbally or in writing, and the Navy shall provide access and suitable facilities to the State to facilitate review of any documents contained the Administrative Record.

31. NOTICE TO CONTRACTORS AND SUCCESSORS

31.1. The Navy shall provide a copy of this Agreement to all prime contractors/consultants retained to conduct or monitor any portion of the work performed pursuant to this Agreement and shall condition all such contracts on compliance with the terms of this Agreement. The Navy shall give written notice of this Agreement to any successor in interest prior to transfer of ownership or operation of the Facility and shall notify the State at least seven (7) days prior to such transfer.

32. MODIFICATION

32.1. This Agreement may be modified by the Parties' agreement. Any agreed modifications shall be in writing, shall be signed first by the Navy and then by the State, shall be effective the date on which the last Party signs the modifications, and shall be deemed incorporated into this Agreement.

33. TERMINATION

33.1. This Agreement may be terminated pursuant to either (a) or (b) below.

a. Acknowledgment of Satisfaction.

(1) The provisions of this Agreement shall be deemed satisfied and this Agreement will terminate upon the execution by the Parties of an Acknowledgment of Satisfaction ("Acknowledgment"). The State will prepare the Acknowledgment for the Parties' signature. The Acknowledgment will specify that the Navy has demonstrated to the State's satisfaction that the

terms of this Agreement, including payment of the State's costs, have been satisfactorily completed. The Acknowledgment will affirm the Navy's continuing obligation to preserve all records after the rest of the Agreement is satisfactorily completed.

(2) The Navy may request in writing that the State prepare the Acknowledgment. Within 60 days after receiving the request, the State shall either approve the request and prepare the Acknowledgment or shall deny the request and provide a written explanation of its denial to the Navy.

b. Any Party to this Agreement may terminate the Agreement by giving 90 days notice to the other Parties.

34. EFFECTIVE DATE

34.1. The effective date of this Agreement shall be the date on which this Agreement is signed by all the Parties.

35. NOTIFICATION

35.1. The Parties shall transmit all required documents and comments thereon, and all required notices by next day mail, hand delivery, electronic means, or facsimile (and followed by an original sent first class mail), or by certified mail if transmitted sufficiently ahead of the applicable deadline. Notifications shall be deemed effective upon receipt.

35.2. Notice to the individual Parties pursuant to this Agreement shall be sent to the addresses specified by the Parties. Initially these shall be as follows:

DTSC:

Jose Salcedo
Department of Toxic Substances Control
8800 Cal Center Drive
Sacramento, California 95826

RWQCB:

Karen Bessette
Central Valley Regional Water Quality Control Board
3443 Routier Road
Sacramento, California 95827

Navy:

Richard Powell
Engineering Field Activity West

Naval Facilities Engineering Command
2001 Junipero Serra Boulevard, Suite 600
Daly City, CA 94014-1976

35.3. All routine correspondence may be sent via first class mail to the above addressees.

35.4. The individuals to whom notice should be given pursuant to this Agreement may be changed by giving notice in accordance with the procedure set out in Section 35.1.

36. RELEASE OF RECORDS

36.1. The Parties may request of one another access to or a copy of any record or document relating to this Agreement, or upon the requesting Party's demonstration of the need to know, any other remediation activities conducted at the Facility. If the Party that is the subject of the request (the originating Party) has the record or document, that Party shall provide access to or a copy of the record or document; provided, however, that no access to or copies of records or documents need be provided if they are subject to claims of confidentiality because of attorney-client privilege, attorney work product, deliberative process, enforcement confidentiality, the Federal Privacy Act, or properly classified for national security under law, regulation, or executive order.

36.2. Records or documents identified by the originating Party as confidential pursuant to (a) non-disclosure provisions of the Freedom of Information Act ("FOIA"), 5 U.S.C. Section 552, other than those listed in subSection 36.1 above, or (b) the California Public Records Act, Section 6250, et seq. of the California Government Code, shall be released to the requesting Party, provided the requesting Party states in writing that it will not release the record or document to the public without prior approval of the originating Party or, if the originating Party does not approve, giving that Party the opportunity to contest any preliminary decision to release a document, in accordance with applicable statutes and regulations. The foregoing sentence shall also apply to budget information provided by the Navy pursuant to Section 13 of this Agreement and identified by the Navy as "confidential", pursuant to FOIA 5 U.S.C., Section 552(b)(4) and California Government Code Section 6254(k). Records or documents which are provided to the requesting Party and which are not identified as confidential may be made available to the public without further notice to the originating Party.

36.3. The Parties will not assert one of the above exemptions in Sections 36.1 or 36.2, including any exemptions available under the FOIA and California Public Records Act if no governmental interest would be jeopardized by access or release as determined solely by the Party who could assert the privilege.

36.4. Any documents required to be submitted to the State for its review and approval, and analytical data showing test results, will not be subject to Section 36.2 or the provision in Section 36.1.

36.5. This section does not change any requirement regarding press releases in Section 37 (Public Participation).

36.6. A determination not to release a document for one of the reasons specified in Sections 36.1 and 36.2 above shall not be subject to Section 21 (Dispute Resolution). Any Party objecting to another Party's determination may pursue the objection through the determining Party's appeal procedures, concerning releasability of documents.

37. PUBLIC PARTICIPATION

37.1. The Navy shall comply with public participation requirement as set forth in this Agreement and in applicable state and federal law. The State will inform the Navy in a timely manner of all State requirements it determines pertain to public participation.

37.2. Except in an emergency, any Party issuing a press release with reference to any of the work required by this Agreement shall advise the other Party of such press release or fact sheet and the contents thereof, at least 2 business days prior to issuance.

38. STATE SUPPORT SERVICES AND STATE OVERSIGHT COSTS

38.1. The Parties recognize that the Navy will be providing funds through the Defense/State Memorandum of Agreement ("DSMOA"), executed on August 21, 1992, between Cal/EPA, DTSC and the State Water Resources Control Board on behalf of the State and the Department of Defense, or through an alternative cooperative agreement, as discussed in section 38.8, below.

38.2. The State will submit an accounting of State costs in accordance with the DSMOA and the DSMOA Cooperative Agreement.

38.3. DTSC will provide the Navy with a billing statement at least quarterly, which will include the name(s) of the employee(s), identification of the activities, the amount of time spent on each activity, and the hourly rate charged.

38.4. In the event the Navy contends that any of the costs set forth in the accounting provided pursuant to sections 38.2 above are not properly payable, the matter shall be resolved in accordance with section 21 (Dispute Resolution).

38.5. DTSC will retain all costs records associated with the work performed under this agreement as required by state law. DTSC will make all documents that support the DTSC's cost determination available for inspection upon request, as provided by the Public Records Act.

38.6. All payments shall be made within 30 days of the date of the billing statement by check payable to the Department of Toxic Substances Control and shall be sent to:

Accounting Unit
Department of Toxic Substances Control

P. O. Box 806
Sacramento, California 95812-0806

All checks shall reference the name and address of the facility.

38.7. An alternative funding mechanism, in the form of a cooperative agreement, for reimbursement of State oversight costs may be used. A cooperative agreement between the Navy and DTSC, and the Navy and RWQCB exist for specifically enumerated Navy installations. At the time NCTS is added to the cooperative agreement (incorporated herein by reference at the time of addition), State costs incurred on or after that date will be paid pursuant to the terms of the cooperative agreement instead of under DSMOA. When the funding mechanism is a cooperative agreement, the terms and conditions of the cooperative agreement will take precedence over the terms and conditions of section 38 of this Agreement.

In the event the cooperative agreement for this site is violated or terminated for any reason, the Parties recognize that the Navy may be providing funds through the DSMOA as described in section 38.1, above.

38. 8. If the Navy and the State are ultimately unable to resolve the issue in dispute in accordance with section 21 of this Agreement (or the cooperative agreement under 38.7 if applicable), The State reserves all its rights to take any action it is entitled to take, including actions to recover costs, absent this Agreement, in the event of any of the following:

- a. Lack of appropriated funds to fulfill the Navy's obligations under the Agreement,
- b. Unresolved dispute as to whether any State cost incurred can be reimbursed through the DSMOA,
- c. Lack of reimbursement from appropriated funds, or
- d. Any other failure or refusal by the Navy to reimburse costs incurred by the State in connection with the subject matter of this Agreement.

39. SEVERABILITY

39.1. If any provision of this Agreement is ruled invalid, illegal, or unconstitutional, the remainder of the Agreement shall not be affected by such a ruling. If either DTSC or the RWQCB elects to terminate this Agreement pursuant to section 33, subsection 33.1.b, this Agreement shall remain in full force and effect as to the remaining two parties.

40. INTEGRATION

40.1. This Agreement constitutes the entire agreement between the Parties and may not be amended, supplemented, or modified, except as provided in this Agreement or by further written agreement.

41. SECTION HEADINGS

41.1. The section headings set forth in this Agreement are included for convenience and reference only and shall be disregarded in the construction and interpretation of any of the provisions of this Agreement.

42. ATTACHMENTS

42.1. All attachments referenced in this Agreement are deemed incorporated into this Agreement by reference.

43. COUNTERPARTS

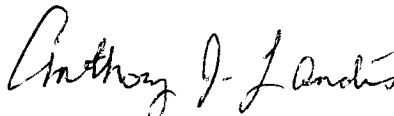
43.1 This Agreement may be executed and delivered in any number of counterparts, each of which when executed and delivered shall be deemed to be an original, but such counterparts shall together constitute one and the same document.

44. REPRESENTATIVE AUTHORITY

44.1. The undersigned representative of each Party to this Agreement certifies that he or she is fully authorized to enter into the terms and conditions of this Agreement and to execute and legally bind that Party to this Agreement.

Dated: 7-29-03

DEPARTMENT OF TOXIC SUBSTANCES CONTROL



By: Anthony J. Landis, P.E., Branch Chief
Northern California Operations
Office of Military Facilities

Dated: 7-30-03

REGIONAL WATER QUALITY CONTROL BOARD



By: Thomas R. Pinkos
Executive Officer

Dated: 22 July 2003

U.S. DEPARTMENT OF THE NAVY

A handwritten signature in black ink, appearing to read "D.S. Bianchi", written over the printed name.

By: D.S. BIANCHI
Captain, Civil Engineer Corps
Commanding Officer
Engineering Field Activity, West

Attachment B

PARCELS

Phase I Parcels: 1, 2, 3, 6, 8, 9, 11, 13, 14, 15, 19, 20, 25, 26, 27, 28, 30, 31, 33, 35, 36, 38, 39, 40, 41, 42, 43, 46, 47, 48, 51, 52, 53, 56, 57, 58, 59, 60, 63, 64, 67, 68, 69, 85, 86, 87, 90, 91, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 104, 105, 106, 107, 108, 109, 110, 114, 115, 116, 117, 118, 119, 125, 130, 131, 132, 133, 135, 136, 148, 149, 168, 171, 172, 173, 174, 175, 179, 184.

Phase II Parcels: 4, 10, 12, 21, 22, 24, 29, 32, 37, 44, 45, 49, 50, 54, 55, 62, 88, 121, 123, 124, 126, 127, 129, 134, 137, 143, 144, 146, 147, 166, 167, 169, 180.

Immigration and Naturalization Service Parcel

Phase III Early Transfer Parcels: 5, 7, 16, 17, 18, 23, 34, 70, 89, 92, 120, 138, 139, 140, 141, 142, 145, 150(3), 153, 154, 155, 156, 157, 158, 161, 163, 164, 165, 170, 176, 177, 178, 181, 182, 183, 185.

#	IR Site		Description	Contamination
1	Site	2	Former Battery Acid Disposal Site	Pesticides, VOCs, TPH, Metals
2	Site	3	Firefighter Training Area	VOCs, SVOCs, Pesticides, Dioxins
3	Site	4	CSA Container Storage Area	Pesticides, VOCs, Metals
5	Site	5A	Sump/Drainage Swale	VOCs, TPH
6	Site	5B	Waste Oil Tank @ Bldg 816C	VOCs, TPH
7	Site	5C	Railroad Car Service Pits	VOCs
8	Site	5D	Storm Drain Bldg 816/916	Pesticides, Metals, VOCs, TPH
9	Site	5E	Waste Treatment Plant	DDT, Metals, TPH
10	Site	5F	Sludge Drying Beds	TPH, DDT, PCBs, VOCs, Metals
11	Site	5G	Waste Water Treatment Drainage	Pesticides, Metals
12	Site	5H	Inactive Pesticide Storage	Pesticides, Metals
13	Site	5I	Storm Drain from Bldg 816B	Pesticides, TPH, Metals
14	Site	6	Former Wash Rack/Associated Storm Drain	TPH, Metals, Pesticides
15	Site	7	North Railroad Yard	DDT, Metals
16	Site	8	South Railroad Yard	PCBs, VOCs, Metals
17	Site	9	Buried Drainage Channel	Pesticides, VOCs, Metals
18	Site	16	Abandoned Channel	PCBs, VOCs, Metals
19	Site	19	Construction Debris (?)	Debris
20	Site	30	Spill Area	TPH, VOCs
21	Site	33	Defense Stockpile Areas	Metals, Pesticides
22	Site	37	Landfill Area	Metals, Pesticides
23	Site	38	Landfill Area	VOCs, Metals, Pesticides

24	Site	39	Landfill Area	VOCs, Metals, Pesticides
25	Site	43	Storage Areas	Metals, VOCs, Pesticides
26	Site	45	Storage Area	DDT, PCBs
27	Site	47	Construction Storage Area	Metals, PAHs
28	Site	48	Former Solvent Tank	TPH, VOCs
29	Site	49	Former UST/Sump @ Bldg 816D	VOCs, TPH
30	Site	50	Battery Storage Area	TPHm, Pb
31	IAS	1	Dredge Material Disposal Area	Metals
32	IAS	2	Dredge Material Disposal Area	Pesticides, TPH, Metals
33	IAS	03/04	Disposal Trench	Dioxins/Furans, Pesticides, PCBs, Metals, VOCs
34	IAS	5	Mill Burner	Metals, Pesticides, Radium
35	IAS	07	Landfill Area	Pesticides, VOCs, Metals
36	IAS	8	Clothing Disposal Pit	Unknown/Not investigated
37	IAS	9	Treated Dirt Road	TPH, Pesticides, Metals
38	IAS	10	Former Concrete Plant	TPH, Pesticides, Metals
39	IAS	11	Disposal Trench/Landfill	VOCs, Metals, PCBs
40	IAS	12	Wet Garbage/Kitchen Waste	Pesticides, PCBs, Metals
41	IAS	13	Disposal Trench/Landfill	Pesticides, Dioxins, TPH, Metals, VOCs
42	IAS	14	Disposal Trench/Landfill	Pesticides, VOCs, Metals
43	IAS	15	Tank Pit	Pesticides, VOCs
44	IAS	16	Landfill Area	Pesticides, VOCs, Metals

IR = Investigation Restoration

Underground Storage Tank/Oil-Water Separators

Site Designation	Parcel Number	Contamination
UST 517-1,2	92	Petroleum Hydrocarbons
UST 817B-1, 2, 3, 4	182	Petroleum Hydrocarbons
UST16-1, 2, 3	120	Petroleum Hydrocarbons
UST 605-1	5	Petroleum Hydrocarbons
UST 916B-1,2	181	Petroleum Hydrocarbons
OWS 508-1	7	Petroleum Hydrocarbons

